



**STEVE WESTLY**  
**California State Controller**

June 28, 2006

Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

**RE: Proposed Amendments to *Parameters and Guidelines*  
Peace Officers Procedural Bill of Rights  
Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405;  
Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983,  
Chapter 964; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675**

Dear Ms. Higashi:

We are submitting amendments to *Parameters and Guidelines* for the Peace Officers Procedural Bill of Rights mandate, adopted July 27, 2000. The amendments are intended to supersede and replace our previously submitted amendments of May 5, 2005.

The recommended changes clarify reimbursable activities consistent with the *Statement of Decision* adopted November 30, 1999, and add the Commission's previously adopted standardized language. The amendments do not include changes reflected in the Commission's *Statement of Decision* adopted April 26, 2006. The amendments also do not include changes to the eligibility of school districts to claim costs. As school districts are not required to have a police force, any costs related to a police force are optional, and, therefore, may not be reimbursable.

If you have any questions, please contact Ginny Brummels, Section Manager, Local Reimbursements Bureau at (916) 324-0256, or Jim L. Spano, Chief, Compliance Audits Bureau, Division of Audits, at (916) 323-5849.

Sincerely,

*Original signed by*

**MICHAEL CARTER**  
Chief Operating Officer

MC/ams

Enclosure

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## **COMMENT ON PEACE OFFICERS PROCEDURAL BILL OF RIGHTS**

Government Code Sections 3300 through 3310  
As Added and Amended by Statutes of 1976, Chapter 465;  
Statutes of 1978, Chapter 775, 1173, 1174, and 1178;

Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994  
Statutes of 1983, Chapter 964; statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675

### **I. SUMMARY AND SOURCE OF THE MANDATE**

In order to ensure stable employer-employee relations and effective law enforcement services, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights (POBAR).

The test claim legislation provides procedural protections to peace officers employed by local agencies and school districts<sup>1</sup> when a peace officer is subject to an interrogation by the employer, is facing punitive action, or receives an adverse comment in his or her personnel file. The protections required by the test claim legislation apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause (“at-will” employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission adopted its Statement of Decision that the test claim legislation constitutes a partial reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

### **II. ELIGIBLE CLAIMANTS**

Counties, cities, a city and county, school districts and special districts that employ peace officers are eligible claimants.

### **III. PERIOD OF REIMBURSEMENT**

At the time this test claim was filed, Section 17557 of the Government Code stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. On December 21, 1995, the City of Sacramento filed the test claim for this mandate. Therefore, costs incurred for Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675 are eligible for reimbursement on or after July 1, 1994.

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<sup>1</sup> Government Code section 3301 states: “For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code.”

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1), of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If total costs for a given year do not exceed ~~\$200~~ \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

#### **IV. REIMBURSABLE ACTIVITIES**

To be eligible for mandated cost reimbursement for any fiscal year, claimants may claim only actual costs. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification, or declaration, stating, "I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge." Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Time study usage is subject to the time study guidelines included in the State Controller's annual claiming instructions. If the claimant performs a time study, the claimant should separately study Unit Level cases and Internal Affairs cases, as their caseloads are significantly different in size, type, complexity, duration, and volume.

For each eligible claimant, all direct and indirect costs for the performance of activities guaranteed by the due process clauses of the U.S. and California Constitutions are not reimbursable. California courts require employers to comply with due process when a permanent employee is dismissed, demoted, or suspended; receives a reduction in salary; or receives a written reprimand. For cases before discipline becomes effective, the following activities prescribed by the California Supreme Court in *Skelly* (*Skelly, supra, 15 Cal.3d 194*) are not reimbursable: notice of the proposed action; the reasons for the action; a copy of the charges and materials upon which the action is based; and the right to respond, either orally or in writing, to the authority initially imposing discipline.

The claimant is allowed to claim reimbursement only for increased costs for the reimbursable activities identified below. Increased costs are limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, all direct and indirect costs of labor, supplies and services, training, and travel for the performance of the following activities are eligible for reimbursement.

A. Administrative Activities (Ongoing Activities)

1. Developing or updating internal policies, procedures, manuals, and other materials pertaining to the conduct of the mandated activities.
2. Attendance at specific training for human resources, law enforcement, and legal counsel regarding the requirements of the mandate. The training must relate to mandate-reimbursable activities.
3. Updating the status report of mandate-reimbursable POBAR cases. The updating relates to tracking the procedural status of cases. It does not relate to maintaining or updating the cases (e.g., setting up, reviewing, evaluating, or closing the cases).

B. Administrative Appeal

1. Reimbursement period of July 1, 1994, through December 31, 1998 — The administrative appeal activities listed below apply to permanent employees, at-will employees, and probationary employees.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest are not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent, probationary and at-will employees for purposes of punishment;
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
- Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss, or hardship and impact the career opportunities of the employee.

~~Included in the~~ The foregoing includes only ~~are~~ the preparation and review of the various documents necessary to commence and proceed with the administrative appeal hearing; exclusive of prior preparation, review, and investigation costs. This includes legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body. The foregoing does not include activities such as writing and reviewing charges that occurred before the officer requested an administrative appeal or defending a lawsuit attacking the validity of the final administrative decision.

2. Reimbursement period beginning January 1, 1999 — The administrative appeal activities listed below apply to permanent employees and the Chief of Police.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent employees for purposes of punishment;
- Denial of promotion for permanent employees for reasons other than merit; and
- Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the The foregoing includes only are the preparation and review of the various documents necessary to commence and proceed with the administrative appeal hearing; exclusive of prior preparation, review, and investigation costs. This includes legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body. The foregoing does not include activities such as writing and reviewing charges that occurred before the officer requests an administrative appeal or defending a lawsuit attacking the validity of the final administrative decision.

### C. Interrogations

Claimants are eligible for reimbursement for the performance of the activities listed in this section only when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, § 3303.)

Claimants are not eligible for reimbursement for activities occurring prior to the assignment of the case to an administrative investigator, e.g., taking the initial complaint; setting up the complaint file; interviewing parties; or reviewing the file and determining whether it warrants an administrative investigation.

Claimants are not eligible for investigative activities, e.g., assigning an investigator, reviewing the allegation, communicating with other departments, visiting the scene of the alleged incident, gathering evidence, identifying and contacting complainants and witnesses, preparing for the interrogation, reviewing and preparing interview questions, conducting the interrogation, or reviewing the responses given by the officers and/or witnesses.

Claimants are also not eligible for case finalization costs, e.g., preparing case summary disposition reports, closing the case file, or attending executive review or committee hearings related to the investigation.

Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (Gov. Code, § 3303, subd. (i).)

1. When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).) Interrogators' time is not reimbursable.

Included in the foregoing is the preparation and review of overtime compensation requests.

Claimants are not eligible for reimbursement under interrogation when a peace officer being investigated under POBAR is not subjected to an interview or interrogation, but is subject to possible sanctions.

2. Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subs. (b) and (c).)

Included in the foregoing is the review of agency complaints or other documents to prepare the notice of interrogation; identification ~~determination~~ of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or witnesses or of other confidential information; preparation of notice or agency complaint; review by counsel; and presentation of notice or agency complaint to peace officer.

3. ~~Tape~~ Recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

Included in the foregoing are the cost of ~~tape~~ media and storage, and the cost of transcription. Excluded is the investigator's time to record the session and transcription costs of non-sworn and peace officer complainant(s).

4. Providing the peace officer employee with access to the ~~tape~~ recording prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g));
  - a) The further proceeding is not a disciplinary action;
  - b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal does not harm the employee's reputation or ability to find future employment);

- c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;
- d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;
- e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

Included in the foregoing is the cost of ~~tape~~ media copying.

5. Producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer, in the following circumstances (Gov. Code, § 3303, subd. (g)):

- a) When the investigation does not result in disciplinary action; and
- b) When the investigation results in:
  - A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e.; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
  - A transfer of a permanent, probationary or at-will employee for purposes of punishment;
  - A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit, or
  - Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

Included in the foregoing is the review of the complaints, notes or ~~tape~~ recordings for issues of confidentiality by law enforcement, human relations or counsel; cost of processing, service, and retention of copies.

#### D. Adverse Comment

~~Perform the following limited activities upon receipt of an adverse comment~~ The following limited reimbursable activities pertain to peace officers recommended for an adverse comment. (Gov. Code, §§ 3305 and 3306).

### School Districts

- a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools districts are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment ~~on the document~~ and obtaining the signature or initials of the peace officer under such circumstances.
- b) If an adverse comment *is* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
  - Providing an opportunity to review and sign the adverse comment;
  - Providing an opportunity to respond to the adverse comment within 30 days; and
  - Noting the peace officer's refusal to sign the adverse comment ~~on the document~~ and obtaining the signature or initials of the peace officer under such circumstances.
- c) If an adverse comment *is not* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment ~~on the document~~ and obtaining the signature or initials of the peace officer under such circumstances.

### Counties

- a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then ~~schools~~ counties are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment ~~on the document~~ and obtaining the signature or initials of the peace officer under such circumstances.



- b) If an adverse comment *is* related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities
- Providing notice of the adverse comment;
  - Providing an opportunity to review and sign the adverse comment;
  - Providing an opportunity to respond to the adverse comment within 30 days; and
  - Noting the peace officer's refusal to sign the adverse comment ~~on the document~~ and obtaining the signature or initials of the peace officer under such circumstances.
- c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then counties ~~obtained~~ are entitled to reimbursement for:
- Providing notice of the adverse comment; and
  - Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment ~~on the document~~ and obtaining the signature or initials of the peace officer under such circumstances.

#### Cities and Special Districts

- a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then ~~schools~~ cities and special districts are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment ~~on the document~~ and obtaining the signature or initials of the peace officer under such circumstances.
- b) If an adverse comment *is* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
  - Providing an opportunity to review and sign the adverse comment;
  - Providing an opportunity to respond to the adverse comment within 30 days; and

- Noting the peace officer's refusal to sign the adverse comment ~~on the document~~ and obtaining the signature or initials of the peace officer under such circumstances.
- c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
  - Providing an opportunity to respond to the adverse comment within 30 days; and
  - Obtaining the signature of the peace officer on the adverse comment; or
  - Noting the peace officer's refusal to sign the adverse comment ~~on the document~~ and obtaining the signature or initials of the peace officer under such circumstances.

The foregoing relates only to peace officers investigated under POBAR who were subjected to an adverse comment by investigation staff. Reimbursement is limited to activities that occurred subsequent to the completion of a case that resulted in an adverse comment recommendation. Reimbursable activities are limited to providing notice of the adverse comment to the peace officer and providing the officer an opportunity to review, sign, and respond to the adverse comment. Such activities include a limited review of the circumstances or documentation leading to an adverse comment recommendation by supervisor, command staff, human resources staff, or counsel to determine whether the recommendation constitutes an adverse comment or a written reprimand; preparation and review for accuracy of adverse comment notice; notification and presentation of adverse comment to officer and notification concerning rights regarding the notice; review of officer's response to the adverse comment, and attachment of response to the adverse comment and its filing.

A complaint is not an adverse comment. The foregoing does not include any activities related to investigating a complaint, which is part of the investigative process. Activities such as, but not limited to, determining whether a complaint is valid and may lead to an adverse comment and/or possible criminal offense, interviewing the complainant, and preparing the complaint investigation report are not reimbursable.

~~Included in the foregoing are a limited review of the circumstances or documentation leading to an adverse comment by supervisor, command staff, human resources staff or counsel; including determination same constitutes an adverse comment preparation of comment and review for accuracy; notification and presentation of adverse comment to officer, and notification concerning rights regarding same; review of officer's response to adverse comment, attaching same to adverse comment and filing.~~

## V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

Claims for reimbursement must be timely filed and must identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV. of this document.

### ~~SUPPORTING DOCUMENTATION~~

Claimed costs shall be supported by the following cost element information:

#### A. Direct Costs

Direct Costs are those cost incurred specifically for the reimbursable activities. Direct costs eligible for reimbursement are defined as costs that can be traced to specific goods, services, units, programs, activities or functions.

~~Claimed costs shall be supported by the following cost element information:~~

##### 1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

~~Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.~~

~~Reimbursement includes compensation paid for salaries, wages, and employee benefits. Employee benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and worker's compensation insurance. Employee benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.~~

##### 2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn for inventory shall be charged using an appropriate, recognized, and consistently applied method of costing.

~~Only expenditures that can be identified as a direct cost of this mandate may be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.~~

### 3. Contract Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed and itemize all costs for those services.

~~Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Submit contract consultant and attorney invoices with the claim.~~

### 4. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and benefits, for each applicable reimbursable activity.

~~Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction.~~

~~Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points, and travel costs.~~

### 5. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

~~The cost of training an employee to perform the mandated activities is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem.~~

## B. Indirect Costs

Indirect costs are costs ~~defined as costs which~~ that are incurred for a common or joint purpose, ~~benefiting that benefit~~ more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

### Cities, Counties, and Special Districts

~~Compensation for~~ Indirect costs ~~is~~ are eligible for reimbursement ~~utilizing the procedure provided~~ using the method described in the Office of Management and Budget (OMB) A-87, *Cost Principles for State, Local, and Indian Tribal Governments*. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) ~~for the department~~ if the indirect cost rate claimed exceeds 10%.

Indirect costs are eligible for reimbursement using the method described in the OMB Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87, Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87, Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base that results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87, Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate, which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected; or

2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected.School Districts

#### School Districts

School districts must use the J-380 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

### **~~VI. SUPPORTING DATA~~**

~~For audit purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested, and all reimbursement claims are subject to audit during the period specified in Government Code section 17558.5, subdivision (a).~~

All claims shall identify the number of cases in process at the beginning of the fiscal year, the number of new cases added during the fiscal year, the number of cases completed or closed during the fiscal year, and the number of cases in process at the end of the fiscal year.

### **VI. RECORDS RETENTION**

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>1</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section V, must be retained during the period subject to audit. If the Controller has initiated an audit during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

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<sup>1</sup>Title 2, division 4, part 7, chapter 4 of the Government Code.

## **VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT**

Any offsetting savings the claimant experiences in the same program as a direct result of the subject-mandate same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.

## **~~VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION~~**

~~An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.~~

## **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

Pursuant to Government Code section 17558, subdivision (c), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the revised adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The revised claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(2), issuance of the revised claiming instructions shall constitute a notice of the right of local agencies to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

## **IX. REMEDIES BEFORE THE COMMISSION**

Upon request of a local agency, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

## **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.